

## STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. V-05/09-289  
 )  
 Appeal of )

# INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, closing his Medicaid. The issue is whether the petitioner's resources exceed the Medicaid resource limit.

The decision is based on the evidence adduced at hearing and argument by the attorneys.

## FINDINGS OF FACT

1. The petitioner is an elderly disabled man who lives in a nursing home. The petitioner suffers from dementia, diabetes, and leukemia. Petitioner became eligible for Medicaid under the Home and Community Based Medicaid Waiver in October 2005.

2. Petitioner's son, R.S., was appointed financial guardian approximately one year ago. J.W. is petitioner's personal guardian.

3. Petitioner has two other sons, L.S. and S.S. who own a farm together.

4. On or about November 13, 2001, the petitioner and his wife<sup>1</sup>, L.S., and R.S. and his wife entered into a Grant of Development Rights, Conservation Restrictions and Right of First Refusal with the Vermont Land Trust, Inc. This conveyance included petitioner's homestead as well as a 34.6 acre property that is not contiguous with the petitioner's homestead.

5. The value of the 34.6 acre property is at issue.

6. On or about June 7, 2005, the petitioner and his wife entered into a warranty deed for the 34.6 acre property in which they conveyed the property to themselves as joint tenants, to L.S., and to S.S. and his wife as joint tenants. By doing so, petitioner retained a one-third interest in the property. The warranty deed was not recorded until April 3, 2008.

7. N.B. is an eligibility benefits specialist with the Department. She learned about the 34.6 acre parcel during a review of petitioner's Medicaid during May 2009. As part of her review, she obtained a current tax bill from the appropriate town.

8. The tax bill assessed the property as follows:

Real	\$44,400
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<sup>1</sup> Petitioner's wife is deceased.

Exemption for land use	-39,600
Total Taxable Value	4,800

9. The land was not assessed at 100% of value. N.B. calculated the property value by dividing the assessed value by the common level of appraisal and applying the ratio to the town's value. She found the property to be worth \$66,646.55. She valued petitioner's one-third interest at \$22,215.55.

10. The Department sent petitioner a Notice of Decision on May 7, 2009 that his Medicaid would end May 18, 2009 because his resources were \$21,255.55 more than the \$2,000 maximum Medicaid limit for a household of one.

11. N.B. did not make any adjustments to the property's value based on the conservation easement.

12. The 34.6 acre property is next to the farm owned by L.S. and S.S. and his wife. They use the property for their cows. Neither of them are agreeable to listing the property for sale as a means to address petitioner's eligibility for Medicaid.

ORDER

The Department's decision is reversed and remanded.

REASONS

To qualify for Medicaid, an individual must have resources under the resource limits. The resource limit for a household of one is \$2,000. P-2420D. All resources must be counted unless they are specifically exempted under M232. M230.

An individual's homestead is exempted under M232.11. The homestead exemption only applies to contiguous property. Petitioner's share in the 34.6 acre parcel cannot be exempted under the regulations.<sup>2</sup>

Under M233(b), the equity value of petitioner's jointly held interests will be counted towards the resource limits. M233 defines "equity value" as

the fair market value minus the total amount owed on it in mortgages, liens, or other encumbrances.

The problem in petitioner's case is that the fair market value has not been determined. The Department did not consider the impact of the conservation easement upon the fair market value in its original determinations. Fair market

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<sup>2</sup> The property can be excluded under M232.13 if efforts are made to sell the property, even if it's only petitioner one-third interest.

value is commonly understood as the price for which property will sell in the open market. A property with a conservation easement does not have the same market value as an unencumbered piece of property. Evidence of the property's fair market value was not submitted to the hearing officer.

The case is remanded to the Department to determine the fair market value of the property. 3 V.S.A. § 3091(d).

THIS MATTER WILL BE CONSIDERED BY THE BOARD AT A MEETING ON WEDNESDAY, OCTOBER 7, 2009. THE MEETING WILL BE HELD AT THE COMMUNITY NATIONAL BANK, 316 NORTH MAIN STREET - 2<sup>nd</sup> FLOOR CONFERENCE ROOM, BARRE, VERMONT. THE MEETING WILL BEGIN AT 10:00 A.M.